

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:

JEFFREY S. DECKER and  
ANGELA DECKER,

Bankruptcy Case No. 98-60975

Debtors.

JEFFREY S. DECKER and  
ANGELA DECKER,

Plaintiffs,

vs.

Adversary Case No. 00-6022

WESTGATE VACATION VILLAS,  
INC., a Florida Corporation,  
as general partner of  
WESTGATE VACATION VILLAS  
LTD., a Florida limited partnership,

Defendant.

OPINION

This matter having come before the Court on a Motion to Dismiss Amended Complaint, Motion for More Definite Statement and Motion Requesting Telephonic Hearing filed by the Defendant on January 16, 2003; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

The Motion to Dismiss Amended Complaint filed by Defendant is made pursuant to Rule 7012 of

the Federal Rules of Bankruptcy Procedure, making Rule 12 of the Federal Rules of Civil Procedure applicable. In particular, this Motion is brought pursuant to Rule 12(b)(6) for Plaintiffs' alleged failure to state a claim upon which relief can be granted.

The main thrust of the Defendant's Motion to Dismiss centers around Defendant's allegation that it did not receive proper notice of the Debtors' original filing for relief under Chapter 7 of the Bankruptcy Code, nor did it receive notice of the Debtors' discharge in bankruptcy. The issue of notice raised by the Defendant is a factual question which is clearly in dispute. While the Plaintiffs concede that, for the purpose of service of summons the address listed in the Debtors' original bankruptcy filing was insufficient, there still remains a question as to whether the Defendant received actual notice of the bankruptcy proceeding at an address which the Debtors claim the Defendant used in conducting its business. For this reason, the Court must conclude that the Plaintiffs' Amended Complaint sufficiently states a cause of action for violation of the discharge injunction under 11 U.S.C. § 524, and the issue of whether or not the Defendant received actual notice of the Debtors' bankruptcy filing and of the Debtors' discharge under Chapter 7 will be a question of fact to be determined at the time of trial in this matter.

The Defendant also raises an issue concerning notices sent to the Debtors/Plaintiffs by an entity referred to as CFI Resorts Management Company, which the Debtors/Plaintiffs allege were further violations of the discharge injunction. The Defendant asserts that the Complaint should be dismissed for the reason that CFI Resorts Management Company is a separate and distinct entity from the Defendant and is not named in this proceeding, and that notices sent by CFI Resorts Management Company cannot be used as evidence against Defendant, Westgate Vacation Villas, Inc. The Court finds that the allegations in the Amended Complaint concerning CFI Resorts Management Company do not form a basis for a

dismissal of the Amended Complaint, but, rather, form a basis for clarification and further amendment.

As for the Motion for More Definite Statement, the Court agrees with the Defendant's position in finding that the Plaintiffs/Debtors should be required to file a second amended complaint clarifying allegations concerning an alleged executory contract and the relevance and significance of notices sent by an entity referred to as CFI Resorts Management Company. The Court further finds that the Plaintiffs/Debtors should be required to supply further information as outlined in the Defendant's Motion for More Definite Statement in items (A) through (H).

Finally, the Court finds that the Motion Requesting Telephonic Hearing is moot as a result of this matter being scheduled for a hearing by personal appearance on March 28, 2003.

ENTERED: April 2, 2003.

/s/ Gerald D. Fines  
United States Bankruptcy Judge